

Notice of Allowability

Application No.

09/941,945

Examiner

Kathleen M Kerr

Applicant(s)

BATHE ET AL.

Art Unit

1652

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to 9/29/04.
2. ☒ The allowed claim(s) is/are 12,14,16,19,23-25 and 29-39.
3. ☐ The drawings filed on _____ are accepted by the Examiner.
4. ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☒ All b) ☐ Some* c) ☐ None of the:
 1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
 6. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO-1449 or PTO/SB/08), Paper No./Mail Date _____
4. ☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☐ Interview Summary (PTO-413), Paper No./Mail Date _____
7. ☒ Examiner's Amendment/Comment
8. ☐ Examiner's Statement of Reasons for Allowance
9. ☐ Other _____



Kathleen M Kerr
Primary Examiner
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DETAILED ACTION

Application Status

1. In response to the previous Office action, a non-final rejection (mailed on July 27, 2004), Applicants filed a response and amendment received on September 29, 2004. Said amendment amended Claims 23 and 29-30, and added new Claims 36-39. Thus, Claims 12, 14, 16, 19, 23-25, and 29-39 are pending in the instant Office action and will be examined herein.

Priority

2. As previously noted, the instant application is granted the benefit of priority for the foreign application 10043331.6 filed in Germany on September 2, 2000. A certified translation has been supplied by Applicant.

Withdrawn - Claim Objections

3. Previous objection to Claim 23 for having improper language is withdrawn by virtue of Applicant's amendment removing "a".

Withdrawn - Claim Rejections - 35 U.S.C. § 112

4. Previous rejection of Claim 23 under 35 U.S.C. § 112, second paragraph, as being indefinite is withdrawn by virtue of Applicant's authorization of the Examiner's amendment.

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5. Previous rejection of Claim 29 under 35 U.S.C. § 112, second paragraph, as being indefinite for the combination of “consisting of” and “comprising” is withdrawn by virtue of Applicant’s amendment as suggested by the Examiner.
6. Previous rejection of Claim 30 under 35 U.S.C. § 112, second paragraph, as being indefinite for the wherein clause about overexpression being confusing is withdrawn by virtue of Applicant’s amendment.
7. Previous rejection of Claim 23 under 35 U.S.C. § 112, first paragraph, written description, is withdrawn by virtue of Applicant’s authorization of the Examiner’s amendment.
8. Previous rejection of Claim 23 under 35 U.S.C. § 112, first paragraph, scope of enablement, is withdrawn by virtue of Applicant’s authorization of the Examiner’s amendment.

Withdrawn - Claim Rejections - 35 U.S.C. § 103

9. Previous rejection of Claims 29 and 31-35 under 35 U.S.C. § 103(a) as being unpatentable over Nakagawa *et al.* (EP 1108790) is withdrawn by virtue of Applicant’s filing of a translation of their priority document, which document disclosed the invention of the instant claims. Said priority document pre-dates the publication of EP 1108790.
10. Previous rejection of Claims 29 and 31-35 under 35 U.S.C. § 103(a) as being unpatentable over Nakagawa *et al.* (USPAP 2002/0197605) is withdrawn by virtue of Applicant’s filing of a translation of their priority document, which document disclosed

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the invention of the instant claims. Said priority document pre-dates the filing of USPAP 2002/0197605.

EXAMINER'S AMENDMENT

11. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 C.F.R. § 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Robert Weilacher on December 22, 2004.

Amendments to the Claims

12. The claims have been amended as follows:

a) In Claim 23, line 16 (last line), replace the entire line with

---the *Corynebacterium glutamicum* zwal gene.---

b) Rewrite Claim 24 as follows:

---24. The method according to claim 12, wherein the bacteria being fermented have expression of one or more genes endogenous to said bacteria being eliminated; wherein the one or more genes is/are selected from the group consisting of:

a gene which encodes phosphoenol pyruvate carboxykinase,

a gene which encodes glucose-6-phosphate isomerase, and

a gene which encodes pyruvate oxidase.---

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c) In Claim 36, line 16 (last line), replace the entire line with

---the *Corynebacterium glutamicum* zwal gene.---

d) Rewrite Claim 37 as follows:

---37. The method according to claim 29, wherein the bacteria being fermented have expression of one or more genes endogenous to said bacteria being eliminated; wherein the one or more genes is/are selected from the group consisting of:

a gene which encodes phosphoenol pyruvate carboxykinase,

a gene which encodes glucose-6-phosphate isomerase, and

a gene which encodes pyruvate oxidase.---

e) In Claim 38, line 16 (last line), replace the entire line with

---the *Corynebacterium glutamicum* zwal gene.---

f) Rewrite Claim 39 as follows:

---39. The method according to claim 30, wherein the bacteria being fermented have expression of one or more genes endogenous to said bacteria being eliminated; wherein the one or more genes is/are selected from the group consisting of:

a gene which encodes phosphoenol pyruvate carboxykinase,

a gene which encodes glucose-6-phosphate isomerase, and

a gene which encodes pyruvate oxidase.---

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Conclusion

13. Claims 12, 14, 16, 19, 23-25, and 29-39 are allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kathleen M Kerr whose telephone number is (571) 272-0931. The examiner can normally be reached on Monday through Friday, from 9:00am to 6pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ponnathupura Achutamurthy can be reached on (571) 272-0928. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Kathleen M Kerr
Primary Examiner
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December 22, 2004